

## **PUBLIC HEALTH COUNCIL**

Meeting of the Public Health Council held Tuesday, December 21, 2004, 10:00 a.m., at the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts. Public Health Council Members present were: Commissioner Christine C. Ferguson, Chair, Mr. Albert Sherman, Ms. Janet Slemenda, Mr. Gaylord Thayer, Jr., Mr. Manthala George, Jr., Ms. Maureen Pompeo, (arrived at 10:20 a.m.) and Dr. Martin Williams. Absent were: Ms. Phyllis Cudmore and Dr. Thomas Sterne. Also in attendance was Attorney Donna Levin, General Counsel.

### **ANNOUNCEMENTS:**

Chair Ferguson announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, chapter 30A, section 11A ½. Chair Ferguson also announced that docket item 6c (Project Application 2-3A91) of Hubbard Regional Hospital will be heard prior to dockets items 6a and 6c, the Vanguard Health Systems applications. Chair Ferguson further announced that the October 27 order to establish priorities for the distribution and use of influenza vaccine is now lifted and the eligibility guidelines, effective immediately, have been expanded to include individuals age 50 and older and the close contacts of others in high-risk categories....Health care providers should now administer flu vaccine for individuals in the following high risk categories:

- All children aged 6-23 months;
- Adults age 50 years and older (new);
- Persons aged 2-64 years with underlying chronic medical conditions;
- All women who will be pregnant during the influenza season;
- Residents of nursing homes and long-term care facilities;
- Children aged 6 months to 18 years on chronic aspirin therapy;
- Health-care workers involved in direct patient care and emergency first responders; and
- Out-of home caregivers and household contacts of anyone at high risk of complications of influenza, including children age six months and younger (new).

NOTE: Flu Mist® may now be used for all healthy individuals five to 49 years of age as approved by the FDA

### **STAFF:**

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Christine Macaluso, Epidemiologist, Mr. Zi Zhang, Director, Health Survey Program, Center for Health Information, Statistics, Research, and Evaluation; Ms. MaryLou Woodford, Director, Women's Health Network, Mr. Michael Botticelli, Assistant Commissioner, Bureau of Substance Abuse Control; Ms. Lois Keithly, Director, Research and Evaluation, Mass. Tobacco Control Program; Dr. Paul Dreyer, PhD, Associate Commissioner, Center for Quality Assurance and Control; and Deputy General Counsel, Kalina Vendetti, Office of the General Counsel; Ms. Louise Goyette, Director, Office of Emergency Medical Services; Ms. Joyce James, Director, Mr. Jere Page, Senior Analyst, and Ms. Joan Gorga, Program Analyst, Determination of Need Program.

## **RECORDS:**

After consideration, upon motion made and duly seconded, it was voted (unanimously) [Council Member Maureen Pompeo not present to vote] to approve the Records of the Public Health Council Meeting of October 19, 2004.

## **PERSONNEL ACTIONS:**

In letters dated December 7 and December 14, 2004, Val W. Slayton, MD, MPP, Director of Medical Services, Tewksbury Hospital, Tewksbury, recommended approval of appointments and reappointments to the various medical staffs of Tewksbury Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Maureen Pompeo not present to vote] That, in accordance with recommendation of the Director of Medical Services of Tewksbury Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointments and reappointments to the various medical staffs of Tewksbury Hospital be approved for a period of two years for the period of December 1, 2004 to December 1, 2006:

<b><u>APPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Michael Hirsch, MD	159424	Provisional Consultant/Psychiatry
David Holder, MD	153740	Provisional Affiliate Psychiatry
<b><u>REAPPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Philip Gendelman, MD	46245	Consultant Staff/Ophthalmology
Katherine Domoto, MBA	39561	Consultant Staff/Medical Ethics&Informatics

In a letter dated December 13, 2004, Paul Romary, Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of the appointments and reappointments to the various medical staffs of Lemuel Shattuck Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Maureen Pompeo not present to vote] That, in accordance with recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointments and reappointments to the various medical staffs of Lemuel Shattuck Hospital be approved:

<b><u>APPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
John Dundas, MD	37976	Active/Psychiatry
Morteza Farizan, MD	39088	General Surgery
Bryant Lin, MD	222978	Consultant/Internal Medicine
Jay Nathanson, MD	202627	Active/Psychiatry
Igor Rozenvald, MD	159101	Consultant/Pathology
Harsh Trivedi, MD	221535	Consultant/Psychiatry

Gay Wehrli, MD	220196	Consultant/Pathology
<b>REAPPOINTMENTS:</b>	<b>MASS. LICENSE NO.:</b>	<b>STATUS/SPECIALTY:</b>
Onsy Yousef, MD	36319	Active/Anesthesiology
Arielle Adrien-Jean, MD	217733	Active/Internal Medicine
Suzanne Salamon, MD	50207	Consultant/Internal Medicine/Geriatrics
Hani Al-Saleh, DMD	20836	Consultant/Dentistry
Salvatore Mangano, MD	22042	Consultant/Surgery
Charles Reilly, EdD	3037	Allied Health Professional
Phyllis Bluhm, PA	259	Allied Health Professional

In a letter dated December 10, 2004, Blake M. Molleur, Executive Director, Western Massachusetts Hospital, Westfield, recommended approval of an appointment and reappointments to the affiliate and consultant medical staffs of Western Massachusetts Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Maureen Pompeo not present to vote] That, in accordance with recommendation of the Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointment and reappointments to the various medical staffs of Western Massachusetts Hospital be approved:

<b>APPOINTMENT:</b>	<b>MASS. LICENSE NO.:</b>	<b>STATUS/SPECIALTY:</b>
Paul Gagnon, DO	75332	Radiology
<b>REAPPOINTMENTS:</b>	<b>MASS. LICENSE NO.:</b>	<b>STATUS/SPECIALTY:</b>
Robert McGovern, MD	37819	Allergy/Internal Medicine
Claude Borowsky, MD	154635	Physiatry
Vijay Patel, MD	81270	Internal Medicine

Notes for the record: Representative Karen E. Spilka's letter of support for MetroWest Medical Center/Vanguard Health Systems was read into the record. It is attached to this record, along with the staff summary as Exhibit No. 14,801. In addition, the letter was signed by: Senator David P. Magnani, State Senator Scott Brown, State Representative David P. Linsky, State Representative Susan W. Pope, and State Representative Tom Sannicandro. During this testimony and the staff presentation, Chair Ferguson stepped out of the meeting and Mr. Sherman Acted as Chair. Chair Ferguson returned to her seat during the BRFSS presentation. In addition, Council Member Maureen Pompeo, arrived during the reading of Rep. Spilka's letter.

**STAFF PRESENTATION: "Trends in Health Risks and Behaviors: Highlights from the 2003 Behavioral Risk Factor Surveillance System (BRFSS)", By Christine Macaluso, Epidemiologists, Zi Zhang, Director, Health Survey Program, Center for Health Information, Statistics, Research and Evaluation:**

Ms. Christine Macaluso said in part, "...The Behavioral Risk Factor Surveillance System (BRFSS) is a random digit dial telephone survey. It is one of the Department's key public health surveillance tools to monitor health risk preventative health behaviors and health conditions. All the results that will be presented here today are based on self-reported information collected during these telephone interviews. Only non-institutionalized adults, ages 18 and over are interviewed. BRFSS has been ongoing annually since 1986 in Massachusetts. In 2003, we had a

sample size of 7,580 adults in Massachusetts. The BRFSS covers a wide variety of topics in addition to questions established by the Centers for Disease Control and Prevention. Massachusetts has a number of its own questions on a variety of topics. For example, we ask questions about intimate partner violence, sexual orientation and behavior, alcohol and drug use awareness, and many more.”

Ms. Macaluso noted, “Post September 11<sup>th</sup>, we began to recognize the need to be able to deal with emerging health topics in real time. As a result, in the event of a bioterror event, we would currently be able to collect information regarding such an event within a few days notice. Another example of this capacity is when the current influenza vaccine shortage was identified, we were able to rapidly introduce a set of questions to better identify high risk populations and to estimate flu immunization rates among children.”

Ms. Macaluso continued, “Topics that will be covered today include influenza vaccination, overweight and obesity, tobacco use, binge drinking, mammogram, and HIV testing. For each of these topics, we are presenting time trends, as well as implications and responses to the programs and policies influenced by these data. As mentioned previously, trends over time are used to inform program development. The first topic we are going to look at is influenza vaccinations. Please note that the data that is being presented here today is from years 2003 and prior. This data does not pertain to the current flu season. The great news in terms of the flu vaccine is that Massachusetts has been doing well in ensuring that the elderly are vaccinated against the flu. Over the past ten years, the percentage of Massachusetts adults, ages 65 plus, who have had an influenza vaccine in the past year, has increased from 49 % to 75%. This is an increase of 53%. This means that we have gone from one out of every two elderly being vaccinated to three out of every four elderly being vaccinated for the flu...”

And further she said, “Activities conducted by the Department’s Immunization Program to ensure that those at highest risk get a flu shot include our own DPH Influenza Web Site, to update the public about the current status of vaccine, mailing to ten thousand providers about flu vaccination recommendations in September, presentations and grand rounds to health care providers, partnering with various organizations such as the Massachusetts Adult Immunization Coalition, Mass Pro, Massachusetts Hospital Association, and the Massachusetts Association of Health Plans, promotional campaigns targeting Latino and African-American communities, standing orders to vaccinate hospital inpatients and vaccination of health care workers.”

Some statistics highlighted in the report:

- Over the past 13 years, there has been an increase in the percentage of adults who are obese, from 10% to 17 %. This is an increase of 70%. The percentage of adults who are overweight has also increased by 32%.
- Hispanics and Blacks are more likely to report higher rates of obesity than Whites and Asians. Hispanic and Black women report higher rates of obesity than Hispanic and Black men, while White and Asian men report higher rates of obesity than White and Asian women.

- Overall, the number of women, ages 40 and older who have been screened for breast cancer, has increased since 1992. In 1992, 68% of women, ages 40 and older, reported that they had had a mammogram in the past two years. By 2003, 85% of women, ages 40 and older, reported having a mammogram, an increase of 25%.
- The percentage of Massachusetts adults reporting binge drinking is consistently higher than the U.S. average on both the BRFSS and SAMSA survey. Both surveys show similar patterns by demographic group.
- The good news is that the percentage of all adults who are current smokers has shown a consistent decrease between 1986 and 2003. However, there has been an increase in youth smoking, ages 18-24. Smoking among youth has been consistently higher than among the overall adult population. Smoking rates among adults who report lower household income has remained consistently higher than among those who report higher household income.
- There has been a steady increase in the percentage of adults, ages 18-64 years, reporting that they had ever been tested for HIV. We found that those who reported participating in high risk activities have a much higher rate of testing. One thousand Massachusetts residents are diagnosed yearly with HIV.

Ms. Macaluso stated in summary, “These data are collected to help in the development of programs to better serve the health needs of the residents of the Commonwealth. It is important to examine trends to inform program development. Issues that bear watching are: while we have the 8<sup>th</sup> lowest smoking rate in the nation, smoking rates are stable among adults, yet there are concerns about young adults; women with disabilities are less likely to get a mammogram than women without disabilities; we have the 4<sup>th</sup> lowest obesity rate in the country, yet our rates continue to rise, race and gender disparities exist; Massachusetts binge drinking rate is consistently higher than the U.S. average, and we found HIV testing rates among high risk adults higher than among the rest of the population. In addition to what has been presented here, we have many other topics in our report, such as: overall health measures, which include health status and quality of life; access and utilization in care, including insurance coverage and access to care; risk factors and preventive behaviors, including physical activity, nutrition, hypertension, and cholesterol awareness; chronic conditions, such as diabetes, cardiovascular disease, asthma and disability; cancer screenings, including prostate, cervical and colorectal cancer screenings; childhood health, including dental sealant, access to care, and asthma; and other topics including illicit drug use and unwanted sexual contact.”

Questions followed by the Council. Mr. Zi Zhang, Director, Health Survey Program, Center for Health Information, Statistics, Research, and Evaluation called on colleagues to reply to Council questions. In response to Council Member Slemenda’s question on how will the findings of the report influence the activities of the Department, Ms. MaryLou Woodford, Director, Women’s Health Network, Department of Public Health, responded, “...The findings have actually supported some of our concerns in that the number of uninsured women continues to increase, as

well as the number of women that we are screening is decreasing. Currently, we have 26 contracts to provide breast and cervical cancer screening across the state and we are looking to increase those numbers through a new RFR and additional contracted providers. We are in the process, in the six to nine months, of doing a complete evaluation of the last ten years of the program, to see what improvements we can do to increase the access and choice for women in the state. By the end of the fiscal year, in the summer of 2005, we should have a clear indication of what that program will look like to increase the number of women that can access the screening”.

Council Member George, Jr. inquired about binge drinking. Mr. Michael Botticelli, Assistant Commissioner, Bureau of Substance Abuse Services, responded by stating that we see binge drinking both with the youth and elderly (60+ years) and across most age ranges and socioeconomic groups.

Ms. Lois Keithly, Director, Research and Evaluation, Mass. Tobacco Control Program, answered a question by Council Member Thayer, Jr., who inquired about the increasing numbers of youth smoking. She said that the Department is not sure why younger people have much higher smoking rates, noting that the rate is stable now at 20.8% (2002 to 2004) having been higher in the past. Ms. Keithly noted further that there have been increasing sales of cigarettes to minors over the past two years and that staff will be looking at that in the 2005 data. In addition, she said that the Department is targeting smoking cessation programs at community colleges and vocational schools, to mothers with young children, and to certain occupations in retail and blue collar environments, where the rates are known to be higher than average.

#### **NO VOTE/INFORMATION ONLY**

#### **MISCELLANEOUS: ADOPTION OF THE FINAL AGENCY DECISION IN THE MATTER OF DEPARTMENT OF PUBLIC HEALTH V. ELIHU WHITE NURSING HOME, INC., ET AL:**

Attorney Kalina Vendetti, Deputy General Counsel, presented the Elihu White Nursing Home, Inc., et al to the Council for final adoption. Ms. Vendetti noted in part, “...In June 2003, the Department initiated an agency action declaring that the licensees of four long-term care facilities were unsuitable and not responsible to establish or maintain long-term care facilities in Massachusetts. Those licensees were the facilities; Elihu White Nursing Home, Inc., Logan Healthcare Facility, Inc., Pond Meadow Healthcare Facility, Inc., Atrium Healthcare Facility, Inc., and the owners, directors and officers of the facilities; Joel K. Logan, Florence E. Logan, Mark S. Logan, Todd S. Logan, Arthur Logan Sr., and Kenneth M. Logan (hereinafter referred to collectively as “the Logan licensees”). One of the licensees, Joel K. Logan, elected to appeal the action and the matter was referred to DALA. In February, 2004 Magistrate Imparato issued the the attached Tentative Decision, finding that Joel K. Logan was unsuitable and not responsible to establish or maintain a long-term care facility in Massachusetts. Under the rules governing administrative actions such as this one, a Magistrate’s tentative decision does not become final unless and until the Public Health Council takes action to adopt it as the final agency decision of the Department of Public Health (“Department”). It is recommended that the Commissioner and

the Public Health Council affirm and adopt the Magistrate's Tentative Decision as the Department's Final Agency Decision."

Attorney Vendetti continued, "On June 6, 2003 the Logan facilities were placed under receivership protection by Associate Justice Nancy Staffier of the Suffolk Superior Court. The Court found that the Division of Industrial Accidents intended to enforce a stop work order at 5:00 p.m. on that day based on the Logan licensees' failure to pay worker compensation insurance. Such enforcement would close down the facilities which had almost 400 residents at that time. The Court also found that the Logans owed the Internal Revenue Service (IRS) over \$6 million, and that the IRS had lifted its levies against the facilities' accounts, including payroll accounts, only on the condition that the Department seek the appointment of a receiver under the Patient Protection Receivership Statute. The Court found that an emergency existed and that the Logan licensees had caused or allowed conditions to exist at the facilities which presented imminent danger of death or serious physical harm to patients, and appointed a temporary receiver to preserve the health, safety and well-being of the residents...Because of the Court's determination that the licensees had caused or allowed an emergency to exist, the Department concluded that likewise, the licensees had allowed conditions constituting jeopardy to exist. On this basis, the Department initiated an agency action on June 12, 2003, seeking a declaration that the Logan licensees were unsuitable and not responsible to establish or maintain long-term care facilities in Massachusetts. On August 7, 2003, Joel K. Logan filed a Notice of Claim for an adjudicatory hearing. A pre-hearing conference was held on October 22, 2003 and on December 29, 2003 the Department filed a Motion for Summary Decision. During the pendency of the agency action, one of the nursing homes closed and another was sold. The licenses for the other two facilities were revoked. Only Joel K. Logan sought administrative review. The only issue remaining before the Division of Administrative Law Appeals was whether Joel K. Logan was suitable and responsible to operate a long-term care facility in Massachusetts. A hearing on the merits took place on January 12, 2004 before Magistrate Maria M. Imparato. On February 4, 2004, Magistrate Imparato issued a Tentative Decision granting the Department's Motion for Summary Decision pursuant to Adjudicatory Rule 1.01 (7) (h). The Magistrate found that Joel K. Logan was a licensee of three of the facilities, the Elihu White, Pond Meadow and Logan Healthcare Facilities and that on June 6, 2003 an emergency existed at those facilities requiring the appointment of a temporary receiver; and that such an emergency constituted jeopardy within the meaning of the Department's regulations. Magistrate Imparato concluded that in accordance with 105 CMR 153.012 (A)(2), Joel K. Logan was neither suitable nor responsible to establish or maintain a long-term care facility in the Commonwealth because, in his capacity as licensee, he had acted in a manner resulting in jeopardy to the health, safety or welfare of the residents of the Elihu White, Pond Meadow and Logan Healthcare Facilities."

In conclusion, Attorney Vendetti asked, "On the basis of the reasons set forth in the Magistrate's Tentative Decision, and the provisions of M.G.L.c.111,ss.71-73, 105 CMR 150.000 and 105 CMR 153.000, it is requested that the Commissioner and the Public Health Council adopt the Magistrate's Tentative Decision as the Final Decision of the Department pursuant to 801 CMR 1.01 (11)(c)(2)."

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve and **Adopt the Magistrate's Decision as the Final Decision of the Massachusetts Department of Public Health in the Matter of Elihu White Nursing Home, Inc., et al .**

**PROPOSED REGULATIONS:**

**INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 170.000:  
CRITICAL CARE SERVICE LICENSURE, EMT REPORTING REQUIREMENTS AND  
TECHNICAL CORRECTIONS:**

Ms. Louise Goyette, Director, Office of Emergency Medical Services, presented the proposed amendments to 105 CMR 170.000 to the Council. She said in part, "...The proposed amendments primarily establish a new category of ambulance service licensure for the delivery of critical care services. In addition, the proposed amendments create new requirements for emergency medical technicians (EMTs) to report criminal convictions and adverse compliance action taken by the Department. Some technical amendments to other portions of the EMS regulations are also included."

Ms. Goyette continued, "Under the proposed regulations, as of December 1, 2006, ambulance services must have CAMTS accreditation, in good standing in order to be licensed by the Department to provide critical care services. (A service may alternatively hold accreditation by an entity the Department considers substantially equivalent to CAMTS. There are other national entities that have indicated interest in developing critical care accreditation programs.) Prior to that date, an ambulance service licensed by the Department at the Paramedic level of care, that has a current written affiliation agreement with a hospital for the provision of critical care services, and has a pending application with CAMTS for accreditation may be licensed to provide critical care services, as long as it achieves CAMTS accreditation by December 1, 2006."

"Licensed critical care services would need to meet all CAMTS standards in their staffing configuration, staff training, continuous quality improvement (CQI), medical oversight and policies and protocols. Minimum staffing for a critical care transport would be a driver/pilot meeting CAMTS requirements, and a medical crew consisting of at least one member licensed at a minimum as a registered nurse who is certified as an EMT-Basic, and one member who is a licensed physician or at a minimum, a certified EMT-Paramedic. Nurses and EMT-Paramedics working for critical care services would need to meet CAMTS standards for special training, orientation and skills maintenance requirements. Paramedics so qualified and operating in accordance with CAMTS standards would be able to provide a level of care while working with a licensed critical care service that go beyond the Statewide Treatment Protocols that normally set their scope of practice in Massachusetts. A fee of \$750.00 annually has been established in the proposed regulations for critical care service licensure, to defray the Department administrative and oversight costs", noted Ms. Goyette.

It was noted that the proposed regulations include reporting requirements for EMS personnel. They require EMS personnel to file a written report with the service with whom they provide EMS, and with the Department within five days of (1) a conviction of a misdemeanor or felony,

other than for a minor traffic violation, or (2) loss or suspension of a driver's license. Currently, without any formal requirement for notification, the Department may not receive information about a conviction or loss of driver's license on a timely basis. In addition, the proposed regulations require EMS personnel to file a written report with their service within five days of Department action against their certification or other Department disciplinary action.

Ms. Goyette said further, "The proposed regulations make a number of technical changes unrelated to either critical care service licensure or EMT reporting requirements. One amends the provision governing extensions of EMT certification time periods for EMTs mobilized to active duty in the armed forces to give the Department more flexibility to make adjustments as required in these cases. Another amends a provision to clarify the minimum required work experience of an Instructor/Coordinator for renewal of approval. Finally, in the section governing the duty to dispatch, treat and transport patients, an existing misplaced modifying phrase has been moved in order to clarify the meaning of the provision as currently interpreted and enforced by the Department." A public hearing is planned for January 2005 to receive comments on these proposed regulations.

#### **NO VOTE/INFORMATION ONLY**

#### **INFORMATIONAL BRIEFING IN 105 CMR 150.000 ET SEQ. REGARDING THE PROVISION OF AUTOMATED EXTERNAL DEFIBRILLATORS (AEDs):**

Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control, presented the proposed regulations 105 CMR 150.000 to the Council. Dr. Dreyer said, "These regulations require that all nursing homes acquire automated external defibrillators and train staff in their use....The American Heart Association recommends that AEDs be installed in settings where they are likely to be used once for each 50,000 person days. This recommendation would include most nursing homes, particularly when staff and visitors are counted. Nursing homes currently do not provide this life saving treatment, and each year hundreds of nursing home patients are transported to hospitals in cardiac arrest. The proposed regulation requires that each nursing home acquire, develop policies and procedures, and train staff in the use of at least one AED by September 30, 2005.

#### **NO VOTE/INFORMATION ONLY**

**Note:** At this point, Rep. Perdone addressed the Council in support of Vanguard Health Services, Inc.. See that application below for his remarks.

#### **PROJECT APPLICATION NO. 6-3A86 OF LAHEY CLINIC HOSPITAL, INC. D/B/A MARY AND ARTHUR CLAPHAM HOSPITAL:**

Ms. Joyce James, Director, Determination of Need Program, presented the Lahey Clinic Hospital Application to the Council. Ms. James, noted that Lahey wishes to expand existing radiation therapy services by acquiring a third linear accelerator with a dual energy of 6-20 MegaVoltage (MeV) which will be located at Lahey Clinic Hospital, Inc. satellite hospital at 1 Essex Center Drive, Peabody, MA 01960....This third linear accelerator will provide megavoltage radiation

therapy service to Lahey Clinic's patients who are currently served at the satellite hospital in Peabody by North Shore Medical Center – Union Hospital. On February 10, 2004, North Shore Medical Center notified Lahey Clinic that Union Hospital intends to terminate its lease arrangement and relocate its radiation therapy service from the satellite to a yet to be determined new site. Ms. James said in closing, "We are recommending approval of the application because we find that it satisfies the nine Determination of Need Review Factors incorporated into the Radiation Therapy Guidelines."

After consideration, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sherman not present to vote] to approve **Project Application No. 6-3A86 of Lahey Clinic Hospital, Inc.**, summary of which is attached and made a part of this record as **Exhibit No. 14,798**, based on staff findings, with a maximum capital expenditure of \$1,580,301 (September 2004 dollars) and first year operating costs of \$901,044 (September 2004 dollars). As approved, the application provides for a third linear accelerator with a dual energy of 6-20 MeV and associated accessories. The unit will be located at the licensed satellite hospital, which occupies leased space at 1 Essex Center Drive in Peabody, MA. This Determination is subject to the following conditions:

1. The applicant shall accept the maximum capital expenditure of \$1,580,301 (September 2004 dollars) as the final cost figure except for those increases allowed pursuant to 105 CMR 100.751 and 752.
2. The applicant shall contribute 48% in equity (\$757,191 in September 2004 dollars) toward the final approved maximum capital expenditure.
3. For Massachusetts residents, the Applicant shall not consider ability to pay or insurance status in selecting or scheduling patients for radiation therapy services.
4. The applicant shall agree to operate radiation therapy equipment that has pre-market approval by the Food and Drug Administration.
5. The Applicant shall submit a signed copy to the Office of Multicultural Health (OMH) when Human Resources finalizes the positions for Director and Coordinator of Interpreter Services.
6. The Applicant's Interpreter Services outreach plan shall include Haitian Creole, Khmer and Vietnamese speaking communities.
7. The Applicant's Peabody location shall continue to operate under the policies, procedures and direction of Lahey Clinic's Interpreter Services Department.
8. The Applicant's annual progress reports shall include statistics for interpreting sessions conducted at the Peabody location maintained by the Interpreter Services Department, and must identify the sessions conducted at the Peabody location separately.

9. The Applicant shall submit an annual progress report beginning one year from the approval date of this project.
10. The Applicant shall provide a total of \$79,015 over a five year period or \$15,803 annually to fund community prevention planning and health promotion programs and projects in its service area. The Community Health Initiatives to be funded include the following:
  - a) \$10,803 per year over five years for a total of \$54,015 shall be provided to support programs and projects for prevention services and health promotion programs determined by the Cape Ann Community Health Network Area (“CHNA 13”), North Shore Community Health Network (“CHNA 14”), and NorthWest Suburban Health Alliance, (“CHNA 15”) in consultation with the Department’s Office of Healthy Communities (OHC) to address priority areas. Lahey Clinic has also agreed to work with OHC and CHNA 13 & 14 to determine which organization(s) shall serve as the fiscal recipient(s) for the funds;
  - b) \$5,000 per year over five years for a total of \$25,000 shall be provided to support programs and projects for Critical Mass, a statewide coalition to eliminate health disparities; and
  - c) Funding for these initiatives shall begin upon notification to the OHC at least two weeks prior to implementation of the project. The Applicant shall also file all reports as required by the Department.

Staff’s recommendation was based on the following findings:

1. The applicant is proposing to expand its existing radiation therapy service by acquiring a third linear accelerator with a dual energy of 6-20 Mega Voltage (MeV) and associated accessories. The unit will be located at the licensed hospital satellite at 1 Essex Center Drive, Peabody, MA
2. The health planning process for this project is satisfactory.
3. Consistent with the 1999 Guidelines, the applicant has demonstrated need for a third linear accelerator, as discussed under the health care requirements factor of this staff summary.
4. The project with adherence to a certain condition, meets the operational objectives factor of the 1991 Guidelines.
5. The project, with adherence to a certain condition, meets the standards compliance factor of the 1991 Guidelines.

6. The recommended maximum capital expenditure of \$1,580,301 (September 2004 dollars) is reasonable compared to similar, previously approved projects.
7. The recommended incremental operating costs of \$901,044 (September 2004 dollars) are reasonable compared to similar, previously approved projects. All operating costs are subject to review by the Division of Health Care Finance and Policy and third-party payers according to their policies and procedures.
8. The project is financially feasible and within the financial capability of the applicant.
9. The project meets the relative merit requirements of the 1991 Guidelines.
10. The project meets the community health service initiatives of the 1993 Guidelines.
11. The Dorothy Kelly-Flynn Ten Taxpayer Group (TTG) registered in connection with the project but did not submit comments.

**ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATIONS:**

**PROJECT APPLICATION NO. 2-3A91 OF HUBBARD REGIONAL HOSPITAL:**

Note: For the record, Hubbard Regional Hospital was taken prior to the Vanguard Applications because it would take less time than the Vanguard applications.

Ms. Joyce James, Director, Determination of Need Program, presented this application to the Council. She said, "We are asking Council's action on the proposed Transfer of Ownership for Hubbard Regional Hospital, resulting from the installation of a new slate of directors serving on the Board of Directors of the hospital. We are recommending approval of this application because we find that it satisfies the standards for the alternate process of a transfer of ownership found at 105 CMR 100.600 of the Determination of Need Regulations. A few conditions are attached to this recommendation of approval."

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve the **Request of Project Application No. 2-3A91 of Hubbard Regional Hospital for Transfer of Ownership**, based on staff findings, a summary of which is attached and made a part of this record as **Exhibit No. 14,799**. As approved, this application provides for Transfer of Ownership and original licensure, resulting from the installation of a new slate of directors serving on the Hospital's Board of Directors. Hubbard Regional Hospital will remain the licensee of the Hospital. This Determination is subject to the following conditions:

1. The Applicant has agreed, as a condition of approval, to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined at M.G.L.c118G or its successor statute covering uncompensated care as existed prior to the transfer. The percentage of gross patient service revenue allocated to free care by Hubbard Regional Hospital shall be 4.5%.

2. The Applicant and the Office of Multicultural Health shall complete an interpreter services assessment process within 60 days of DoN approval. The Applicant shall submit a plan for improvement to address any identified concerns within 120 days of DoN approval to the Office of Multicultural Health.
3. The Applicant shall notify the Office of Multicultural Health of any substantial changes to its interpreter services program after a plan for improvement has been agreed upon.
4. The Applicant shall submit annual progress reports to the Office of Multicultural Health on the anniversary date of the DoN approval.

**PROJECT APPLICATION NO. 2-3A88 OF VANGUARD HEALTH SYSTEMS, INC. (SAINT VINCENT HOSPITAL):**

Vincent A. Pedone, State Representative, Worcester, addressed the Council, "...I just wanted to come down and offer my support to the merger, to the acquisition of Vanguard Health Systems. Everybody in the past few weeks, who has been speaking on this, had nothing but glowing remarks about this acquisition or this transfer. Myself, and the other members of the legislative delegations, wrote a letter to this body and asked for approval of the transfer, and we are standing behind that letter. [The letter was signed by State Senator Elect Edward Augustus, Jr., State Representative John J. Binienda, State Representative John Fresolo, State Senator Guy Glodis, State Representative James B. Leary, and State Representative Robert P. Spellane and is attached along with the staff summary to this record as Exhibit No. 14,800.] There have been some issues in the past that have been resolved. There are some labor issues that labor unions are going to speak on sometime later today. We are working together to ensure that all existing contracts will continue to be honored and the people of Worcester will have a quality hospital. I know Mr. Sherman works at the University of Massachusetts, and obviously has a connection with UMass Memorial. To have two quality health care systems in Central Massachusetts is critical. It is critical to the care that is given to people. It is critical to Worcester's economy. As a legislator, we have to also look at what is critical to the City. This system is going to continue to pay taxes to the City of Worcester for these properties. A few years back, we had concerns about poor profit in medicine, but I think that the market has shown, and the health care systems have shown that for profit medicine is not an enemy to good public health. We as a legislative delegation, as a City, do support this merger and this acquisition. We would ask you to allow it and endorse the transfer."

Mr. Jere Page, Senior Analyst, Determination of Need Program, presented the Vanguard Health Systems/Saint Vincent Hospital application to the Council. He said, "...Vanguard Health Systems, through its wholly-owned subsidiary, VHS Acquisition Subsidiary Number 7, Inc., is before the Council today seeking the Transfer of Ownership of Saint Vincent Hospital in Worcester. Vanguard submitted a bid for Saint Vincent Hospital, which was accepted by Tenet Healthcare, the current owner, and led to the successful negotiation for purchase agreement for the hospital's real estate and assets. Based on review of the application, Staff has determined that the applicant satisfies the five standards set forth in the DoN regulations regarding the alternate process. We held a public hearing on November 8<sup>th</sup> in Worcester at the request of the Sandra Ellis, Allison Kennedy, John Andreoli, C. Barry Dykes, Timothy Murray, and Wayne

Glazier Interested parties. All commentators were in support of the hospital's proposed acquisition by Vanguard, and at the hearing, and in later written comments, the Worcester Community Healthcare Coalition, the Worcester Legislative Delegation and the Central Massachusetts Independent Physician Association recommended the DoN approval be subject to certain conditions of approval. These involved continuity of care, community benefits, free care, cultural competency, mental health/substance abuse services, employee relations, governance, capital expenditure, and a stronger collaborative partnership between the Hospital and the Worcester area's independent physicians."

Mr. Page continued, "Staff notes that the applicant has agreed to conditions of approval on free care, which is required by the Department, as well as cultural competency, which involves an interpreter condition recommended by the Department's Office of Multicultural Health. The applicant agreed, as a condition of approval, to provide annual reports on its community benefits programs, as well as seek input from mental health and substance abuse providers on how best to meet the needs of mental health patients and mental health providers in the area. Concerning the other recommended conditions of approval from the community groups I just mentioned, concerning continuity of care, employee relationships, governance, capital investment, and a strong partnership between the Hospital and the independent physicians, Staff notes that after it became apparent that there would be no agreement on these recommended conditions because of time constraints, we asked that the applicant respond to each of those issues in writing. The applicant did so and staff's review of the issues found that the recommended conditions, absent any agreement between the applicant and the community groups were not warranted. Generally, these issues either related to internal operations of the hospital, which are beyond the purview of DoN review or were unfeasible, given the possibility of change, and therefore uncertainty in the regulatory reimbursement and competitive environments. After careful consideration, staff continues to recommend approval of this project..."

Mr. Page added, "Paul just handed me a condition they have just agreed to, in addition to the four conditions I just mentioned. This condition, which I will read into the record, states that Vanguard representatives will collectively meet with community organizations that represent a broad cross-section of interest in the Greater Worcester community at least every six months for four years following this sale to discuss their concerns about the health care needs of the community and how the hospital and other health care providers in the community can best address these needs. Vanguard shall appear before the Public Health Council no less frequently than every six months for four years after the sale to report on the conditions raised in the above discussions and the efforts being undertaken by the hospital, and other health care providers in the community to address those needs. If the community organizations and Vanguard agree, they may jointly petition the Public Health Council in writing to relieve Vanguard of the responsibility of appearing every six months before the Council..."

Attorney David Spackman, of Greenberg & Traurig, representing Vanguard Health System, Inc., made brief introductory remarks and then Mr. Randall Smith, President of the Western Division of Tenet Healthcare Corporation, addressed the Council. He said, "Thank you for giving me the opportunity to speak with you on behalf of Tenet, regarding the sale of MetroWest Medical Center and Saint Vincent's Hospital in Worcester. On January 28<sup>th</sup> of this year, Tenet announced that we would seek buyers for 27 of our hospitals across the country, including the

three that we own in Massachusetts, the two MetroWest Medical Center facilities, and Saint Vincent Hospital. We selected these hospitals for divestiture because they no longer fit into our company-wide strategy of concentrating our efforts in a core group of hospitals in areas where we have a significant presence or that present the opportunity to expand our presence. Additionally, our company was faced with financial issues, which caused us to reevaluate our capital investment capabilities. The remaining sixty-nine core facilities in Tenet will be concentrated in California, Louisiana and Texas.”

Mr. Smith continued, “...As part of our commitment to the MetroWest and Worcester communities, we pledged that we would only seek buyers who would agree to maintain MetroWest and Saint Vincent Hospitals as full service acute care facilities. We recognize the important role these hospitals play in their communities and we were determined to find a buyer who would be capable of insuring their future as excellent facilities. We also wanted a buyer who would share our pride in serving and being a part of these communities. Today, I am pleased to say that Tenet has fulfilled its commitment. We announced in October that we had entered into a definitive agreement to sell MetroWest Medical Center and Saint Vincent Hospital to Vanguard Health System, a well respected and well established hospital company whose management already has operating experience in Massachusetts.”

Mr. Smith said further, “...Prior to accepting any bids, we established the following basic criteria that any potential new owner had to meet. They had to demonstrate sufficient access to capital and the financial ability to operate these facilities. They had to have experience owning acute care hospitals. They had to have an experienced hospital management team in place, and they had to commit to continue operating the hospitals as acute care facilities. After aggressively marketing these hospitals for six months, Vanguard was the only interested buyer that was able to meet every one of these conditions. For that reason, I strongly believe the sale of MetroWest Medical Center and Saint Vincent Hospital is in the best interest of the community served by these facilities.”

In closing, Mr. Smith said, “In the final analysis, our selection of Vanguard turned out to be, for Tenet, an easy decision. The response to our RFP was overwhelmingly superior to the others that we received. I would respectfully request that the Council approve their DoN application, and I will be happy to answer any questions you may have.”

Mr. Keith Pitts, Vice-Chairman, Vanguard Health Systems, addressed the Council. He said, “I want to thank you for the opportunity to briefly address you regarding our desire to purchase Saint Vincent Hospital in Worcester, the MetroWest Medical Center facilities in Natick and Framingham...Vanguard is a company that has a lot of experience in running acute care hospitals. Our current company, we have 16 hospitals in four markets in the country, four very diverse markets: San Antonio, Texas, Phoenix, Arizona, Chicago, Illinois and Orange County, California. The company is financially stable. We have been privately owned since our inception in 1997. Many of us were management of former companies, including Arrenda Health Corp., which owned 55 hospitals including Saint Vincent Hospital in Worcester until it was purchased by Tenet in late 1996. Many members of our team have been in senior management positions in HCA, Health Trust, as well as not-for-profit organizations over the years. We are very well capitalized. Our majority owner is the Blackstone Group...We also

have a lot of ownership from management in the company. This is the business that we have been in most all of our careers, and will continue to be in. We are very interested in coming back to Massachusetts. We had a very good experience here before... We are very happy to have the opportunity to come back and also to be able to serve the MetroWest community, as well as the Worcester community.”

After noting Vanguard’s extensive outreach efforts in the MetroWest and Worcester communities, Mr. Pitts stated further, “Our goals are very simple. We want to continue to grow and invest in these facilities. We are a growth company. We have been very successful in adding services in communities, growing our business in communities, continuing to focus on patient focus, quality health care and quality service to our patients. We strive to make these facilities the facilities of choice. We want to provide the best quality of care we can. We see health care as a very local business and a local service...”

Mr. David Forsberg, President, Worcester Business Development Corporation (former Massachusetts Secretary, Executive Office of Health and Human Services) testified before the Council. He noted that he was a lifelong resident of Worcester. Mr. Forsberg said, “I think it is fair to say that this is the first time I have been in as a total civilian. I am here to offer a community perspective with some historic grounding about why this transfer is so important, and why we feel so strongly that Vanguard Health Care Systems is the right choice for Worcester and for Saint Vincent’s Hospital. I want to give you three perspectives. I currently serve as the President of the Worcester Business Development Corporation, a small non-profit organization. We take on the tough projects that the private market won’t do. We are intimately involved with the economic future of Worcester, and particularly the downtown... This is a very important transaction for the stability and the financial future of the City. In a prior life, I was the Chief Development Officer for the City of Worcester, and actually sat across the table from Arrenda as we went through a very difficult negotiation. I know Charlie Martin and Keith Pitts personally. I found them to be honorable people. I found them to be incredibly good business people; but, more important than that, to have a clinical sophistication and a health care perspective that I think is going to hold this community in good stead. At the time we did this project, it was an incredible public/private partnership and there is a public dimension to this. The Commonwealth invested considerably in Saint Vincent. A forty million dollar urban revitalization bond, 50/50 City of Worcester and the Commonwealth was instrumental in triggering the over two hundred million dollar private investment in this facility... I think from both an economic perspective and a health care perspective, that this is the right situation for our community and for the Commonwealth as a whole...”

Council Member Sherman recused himself from voting due to his financial interest, and that he works for UMass Medical School. He said, UMass. Medical School did not get to be the number three medical school in primary care in the United States by having hospitals in town that didn’t know what they were doing, didn’t understand the nature of the business. I too, found Arrenda to be quality people. I too believe they are quality operators. They will do the City of Worcester proud, as well as the students that graduate from medical school who stay in the Commonwealth and practice medicine.”

Dr. Janice Yost, President/CEO, Health Foundation of Central Massachusetts that is located in Worcester. She is also a Worcester resident. She said in part, “ I am here to speak in strong support of Vanguard Health Systems Determination of Need application. My support comes from my perspective as a consumer of health care services in Worcester and also as a member of the Leadership Council of Common Pathways, also known as CHNA-A, in which I have been actively involved over the past five years. Common Pathways is a Healthy Communities process to broadly engage residents throughout the Worcester community in developing a common vision, priorities and taking action to improve our quality of life. The Tenet Health Care Foundation, the Foundation associated with the current owner of Saint Vincent Hospital, is one of the funders of Common Pathways.”

The Health Foundation of Central Massachusetts is the philanthropy that was created from the sale of the non-profit, Worcester-based HMO to a private taxpaying entity. That transaction, as well as the previous for-profit conversion of Saint Vincent Hospital was approached with much trepidation by residents in Worcester and officials in the Commonwealth. Nearly ten years have elapsed since these conversions. Both are now recognized as having provided positive results. The public assets of the prior non-profits continue to be reinvested in the community and we have a new state-of-the-art medical facility serving our region...”

Dr. Yost also said, “...What is critical to the transaction is that the buyer had the financial capacity and community interest required to sustain Saint Vincent’s Hospital. These are challenging times for acute care hospitals in Massachusetts. Vanguard has the strong financial backing of the Blackstone Group, a private equity sponsor, which will enable it to infuse Saint Vincent Hospital with the capital necessary to upgrade equipment and technology, and expand services in our community. Indeed Vanguard’s access to capital will enhance the health care provided by Saint Vincent Hospital, and that will help to insure that Worcester residents continue to have a choice when selecting top quality health care services. Thus, I urge the approval of Vanguard’s Determination of Need application.”

Mr. Jay Gardner, Director of Public Health, City of Worcester, representing City Manager, Michael V. O’Brian, said: “I have a letter from the City Manager and I would like to read it into the record:

Dear Commissioner Ferguson and the Public Health Council:

I am pleased to participate in the regulatory proceedings administered by the Massachusetts Department of Public Health concerning the license transfer of Saint Vincent’s Hospital to Vanguard Corporation. On November 8, 2004, a public hearing held at Worcester State College provided an open and comprehensive discussion from all parties affiliated with this essential institution. I, along with members of my administration, local political leaders, community advocates and concerned citizens, unanimously offered supportive testimony to this transfer.

Today’s formal hearing provides again an opportunity to publicly voice the City of Worcester’s strong support of the Vanguard Corporation to lead this state-of-the-art health care facility located in the heart of Worcester’s business district. Worcester’s Medical Center has evolved into both an important health care provider for the community, but also a major employer that

plays a significant role in this region's economy. In my discussions with the principals of Vanguard, their interest has been clearly expressed to fully participate, collaborate and demonstrate a 'community commitment' and a corporate responsibility critical to the future growth and success of this noble institution. At a time when affordability, access and availability of quality health care services are becoming increasingly complex, Vanguard brings experience and stability to properly plan and deliver the highest standard of care.

On behalf of the City Administration, I support the Vanguard Corporation in their acquisition of Saint Vincent and feel confident that under their leadership, the scope and stature of this historic institution will flourish. I look forward to working with Mr. Barry Dykes and the entire Vanguard administration to creatively solve the significant challenges and barriers facing all healthcare facilities today. The principals of Vanguard realize that the success and potential of Worcester is measured by the health of the community, its neighborhoods, and residents. Vanguard's strong corporate community leadership ensures positive growth and quality healthcare to Worcester and the Central Mass. Region.

Sincerely, Michael V.O'Brian, City Manager"

Ms. Sandra Ellis, R.N., spokesperson for Worcester Healthcare Coalition testified before the Council. She stated in part "...We have been participating in this process in an effort to ensure that the Department of Public Health utilizes all of its regulatory power and influence to ensure that the sale of Saint Vincent to Vanguard Health Systems occurs in a manner that places the interest of patients of Saint Vincent Hospital, and the community served by Saint Vincent Hospital, ahead of those of the free market and the profits of shareholders on Wall Street. Let us be clear, the Coalition supports the sale of this hospital to Vanguard. The Coalition acknowledges and applauds the positive statements made by officials at Vanguard Health Systems in the early stages of this process, regarding their commitment to work with the community and with employees and their unions as a good corporate citizen, but we have been down this road before. We have participated at hearings and meetings like this one. First by Columbia HCA in Framingham and later by Tenet in Framingham and in Worcester, promises made to enhance and maintain services to create community linkages, to provide free care and community benefits. We have seen how most of these promises were broken as the pressures of the market overcame the commitment to the community."

Ms. Ellis continued, "We saw those providers, having promised to become longstanding members of the community, pack-up and leave, placing our communities under threat of loss of our health care safety net. We have participated in this process with the hope of convincing DPH to use this experience, to guide them in convincing that these new owners adhere to strong written and forcible conditions to protect the interest of the community. We have since reviewed the staff's recommendations for your approval of this sale, and transfer of ownership, and we come away disappointed and dismayed by the lack of accountability this agreement provides, but not at all surprised. We understand that, in dealing with the Determination of Need process in Massachusetts, we are dealing with what amounts to a regulatory paper tiger, lacking the ability to require the accountability for a provider to maintain essential services, and no process to truly evaluate and stipulate what is truly needed and essential in the way of health care services. We are well aware that DPH is functioning as best it can in the health care system created by the

industry and the legislature, based on a free market model, allowing hospitals to compete openly, without restriction for survival.”

Ms. Ellis said further, “In the ensuing years, more than 26 hospitals have closed, leaving thousands of residents with less access to health care and services. The most recent victim was Waltham Hospital, a facility that DPH evaluated and was determined to provide essential services; yet, what happened? Rival providers, as promoted under the free market model, took Waltham’s physician base, driving it to closure, and nothing could be done to stop it. We would ask you, how many hospitals have to close? How many communities must suffer the loss of their health care safety net before our state government acts to protect those communities? The unbridled reliance on a deregulated health care system is failing our citizens in our communities, and it must end. The legislature and the state government must take steps to enact health care policies to stabilize the health care system and the hospital industry in Massachusetts. First, the legislature must begin the development and implementation of a state health care policy that sets short and long term goals for health care reform in Massachusetts, and guarantees access to all essential health care services. Second, hospital stabilization legislation to regulate Massachusetts hospitals to ensure the survival of needed facilities to meet health care needs of the State’s residents needs to pass. Ultimately, DPH needs real power to hold health care providers accountable for providing essential services and prevent them from eliminating services that are deemed essential. As I said earlier in my testimony, we are supporting this sale. We truly hope that Vanguard is successful and that they will see it in their best interest to honor the commitments made to the communities they are entering; but, should history repeat itself, and we find ourselves back here again, it is our hope that you will be sitting in a position of real power to truly protect the interests of those lives that depend on the decisions that you make.”

Mr. Bob Marra, spokesperson, Worcester Healthcare Coalition, Director, Community Division, Healthcare For All, a statewide advocacy organization, addressed the Council. He said in part, “Healthcare For All and our partnering law firm, Health Law Advocates, has assisted community groups across the state for the past eight years in sales, mergers, closures. This is what we get called for. Community groups organize around the state for probably the most important health decision in their community, and they ask for our assistance, and it is based on this experience of the past eight years that I want to make just a few comments and offer a few questions. I will stick with Worcester with these comments and questions...How long will the inpatient psychiatric unit stay open at Saint Vincent’s? Quite pointedly, there is no promise from Vanguard mentioned in the staff report on continuing present services, other than their promise to keep the medical surgical beds and the emergency room, unlike again the written promises to keep all services going in Framingham. Will free care increase with the growing community need for free care in Worcester? In the past three years, the Free Care Pool (2000-2003) Saint Vincent’s free care increased 4.8% over that time period; whereas UMass Memorial’s rate of increase for free care was 27%. Who will decide which services stay or go, and who will decide how much free care will be provided? The staff report seems to agree with the Worcester Legislative Delegation that these decisions will be made by the local hospital Board of Trustees. We don’t believe this is an accurate statement. Per the terms of the sales, our understanding of these sales, actually for the past several years, all the major decisions about budget, about finance, will be made in the corporate headquarters a long, long way from Worcester. And what legal power do the people of Worcester have to stop any decisions they think are not made in

their community interest? Virtually none. As noted in your staff report, they do have the power to have a public discussion. That is it. That is a power but that's not, in our opinion, enough power."

Mr. Marra continued, "The marketplace, we believe, needs to be servant and not master, and when I say we, I work with, again, community coalitions from North Adams to Orleans in Massachusetts, and their growing concern, and they have been voicing this for at least the last three or four years, is this system, this deregulated system, this marketplace-based system, needs to be changed and changed dramatically. There needs to be a head added to the invisible hands of the marketplace. They like your heads, quite frankly...They want all of you to have more resources and to actually have some power to affect how this system operates. Fitchburg is a good example. They are left with one hospital. They certainly wanted to have at least two ERs stay open. At the very least, they would have like the state to step in with some mitigation for some additional ambulance service so that people from Ashby could make it alive to Health Alliance, and they believe they have at least one example where somebody did not make it alive because of the extra time involved...People are tired of the present deregulated system. They want something different and they, again, want you to help administer that different system."

Council Member Slemenda added, "I have been here for a long time. I have been through a lot of these different things, and I find it remarkable that there was so little dissent...I am assuming that we have done everything we can with your regulations to provide the best for the community. I just want you to say yes [speaking to DPH staff].

Mr. Jere Page, Senior Analyst, Determination of Need replied, "Yes. The process used to review this application, has been around since 1989-1990. Virtually all the transfers in hospitals since then have been pursued under this process of five standards, and one of those is free care, and I would just say, about free care, that some of the numbers the Coalition were raising are elevated because I believe that they were including the total free care added at the hospital. In terms of what we do here, in the mid 1990s, the Legislature changed that to include just the emergency room bad debt. That was all that was going to count towards the compilation of the total free care, so total bad debt and free care. In this case, the total for that would be 2.63%. That is from the Division of Health Care Finance and Policy for FY 2004. That was what the hospital did last year, and what it should maintain as a condition of approval."

Chair Ferguson added, "...The additional condition, which was outlined, is an effort to try to help facilitate conversations on an ongoing basis between the community and the hospital and to work in whatever way we can to make this a continued smooth and appropriate transfer and delivery of services in the Worcester area."

Council Member George, Jr. suggested that instead of annually, that the applicant appear before the Council every six (6) months instead of annually for four years. Chair Ferguson, agreed that that would be okay. This is condition number 5 in the staff summary. Mr. George, Jr. said further, "I am very impressed with the presentations and the thoroughness which staff has shown, and also the support of the Worcester community for this ongoing forward."

Chair Ferguson added, “I have to say, it has been much different than I feared. I am very grateful to everybody who has worked so hard to make this function well, both Tenet and Vanguard and as Albie says, ‘there’s lots of bodies lying around’. We are not a paper tiger.”

Mr. Sherman said, “This is not a paper tiger. There were a lot of bodies lying around here the past twenty years, where we can clearly demonstrate that the Public Health Council may not be loud, but is very effective.”

After consideration, upon motion made and duly seconded, it was voted: (unanimously) [Council Member Sherman recused himself] to approve **Project Application No. 2-3A88 of Vanguard Health Systems, Inc., for transfer of ownership and original licensure of Saint Vincent Hospital;** based on staff findings, with an amendment to condition #5 by Mr. George, Jr., for the applicant to return to appear before the Public Health Council every six months instead of annually; and that the staff summary and letters be attached and made a part of this record as **Exhibit No. 14, 800.** This Determination is subject to the following conditions:

1. The applicant has agreed to maintain or increase, for an indefinite period, the percentage of gross patient service revenue allocated to free care, as defined in M.G.L.c118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue allocated to free care at Saint Vincent Hospital by VHS Acquisition Subsidiary Number 7, Inc. shall be 2.63%.
2. The applicant shall enhance the Hospital’s existing interpreter services program by providing the following missing elements of a professional medical interpreter service:
  - Policies prohibit the use of minors as interpreters, stress that staff cannot encourage the use of family and friends as interpreters and provide protections for employee volunteers who may be called upon to interpret.
  - A plan to reach out to the agencies and natural support groups of Limited English Proficient (LEP) communities to ensure their members have first-hand information about Saint Vincent Hospital’s programs and the availability of interpreter services.
  - Provide the Office of Multicultural Health (OMH) with a copy of the annual language needs assessment at Saint Vincent Hospital as required by 105 CMR 130.1101-130.1108.

A plan for improvement addressing the above shall be submitted within 120 days of DoN approval to OMH, and Saint Vincent Hospital shall notify OMH of any substantial changes to its interpreter services program after a plan for improvement has been agreed upon, as well as provide annual progress reports to the OMH on the anniversary date of DoN approval. In addition, the Hospital shall adhere to the objectives and purposes of the culturally and linguistically appropriate CLAS standards published by the U.S. Department of Health and Human Service’s Office of Minority Health.

3. The applicant shall adhere to the requirements of the Massachusetts Attorney General's Community Benefit Guidelines, and provide annual reports to the Attorney General of its community benefits programs to the same extent as required of non-profit acute care hospitals by the Guidelines.
4. The applicant shall seek input from the Greater Worcester community, including the mental health and substance abuse providers and mental health and substance abuse consumer organizations, including but without limitations, the Latino Mental Health Project, to determine how to best meet the needs of the mental health community, and will make every attempt to facilitate a process that best serves the mental health and substance abuse needs of all residents of the Greater Worcester community.
5. VHS representatives will meet collectively with community organizations that represent a broad cross-section of interests in the Greater Worcester community at least every six months for four years following this sale to discuss their concerns about the healthcare needs of the community and how the Hospital and other healthcare providers in the community can best address those needs. VHS shall appear before the Public Health Council not less frequently than six months for four years after the sale to report on the concerns raised in the above discussions and the efforts being undertaken by the Hospital and other healthcare providers in the community to address those needs. If the community organizations and VHS agree, they may jointly petition the PHC in writing to relieve VHS of the responsibility of appearing every six months before the PHC.

#### **Staff's Findings:**

Based upon a review of the application as submitted and clarification of issues by the applicant, Staff found that the application satisfied the requirements for the Alternate Process for Change of Ownership found in 105 CMR 100.600 *et seq.* Staff also found that the applicant satisfied the standards applied under 100.602 as follows:

- A. Individuals residing in the Hospital's health systems area comprise a majority of the individuals responsible for decisions concerning:
  1. approval of borrowings in excess of \$500,000;
  2. additions or conversions which constitute substantial change in services;
  3. approval of capital and operating budgets; and
  4. approval of the filing of an application for determination of need.
- B. The applicant has consulted with the Division of Medical Assistance ("DMA") concerning the access of medical services to Medicaid recipients at its Hospital. Comments from the DMA indicate no access problems for Medicaid recipients in the Hospital's primary service areas.

- C. The Division of Health Care Quality has determined that the Applicant and any health care facility affiliates have not been found to have engaged in a pattern or practice in violation of the provisions of M.G.L.c.111,§51(D).
- D. The applicant has agreed to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined at M.G.L.c.118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue, most recently filed but unaudited by the Division of Health Care Finance and Policy, allocated to free care in FY 2004 at Saint Vincent Hospital was 2.63%.
- E. VHS Acquisition Subsidiary Number 7, Inc., pending acquisition of Saint Vincent Hospital, will be an affiliate of the Hospital, which is licensed by the Department.

**PROJECT APPLICATION NO. 4-3A89 OF VANGUARD HEALTH SYSTEMS, INC:**

Ms. Joan Gorga, Analyst, Determination of Need Program, presented project 4-3A89 of Vanguard Health Systems, Inc. to the Council. Ms. Gorga said, "Vanguard Health Systems, Inc., through its wholly-owned subsidiary, VHS Acquisition Subsidiary Number 9, Inc., is before the Council today seeking transfer of the ownership of MetroWest Medical Center in Framingham and Natick, which is currently owned by the Tenet MetroWest Healthcare System Limited Partnership. Vanguard Health Systems Inc. submitted a bid for MetroWest Medical Center, which was accepted by Tenet Healthcare Corporation and led to the successful negotiation of a purchase agreement for the hospital's real estate and assets. The application was reviewed using the Alternative Process for Change of Ownership. The standards applied include required residence in the applicant's service area for a majority of the individuals involved in decision-making for the facilities. They include no access problems identified by the Division of Medical Assistance and no violation of fraud provisions. The applicant has agreed to maintain or increase the 3.17 percent of gross patient service revenue allocated to free care, as existed prior to the transfer, which staff is recommending as a condition of approval. The applicant is a licensed facility."

Ms. Gorga continued, "In addition, a public hearing was held on November 10 in Framingham at the request of the Mark Rich, Laurie Martinelli, Martin Cohen, Yoon Lee, Walter Soper, Theodore Welte, and the Christopher Petrini/John Flynn Interested Parties. The hearing was attended by sixty people and thirty-one people testified. Several major concerns were raised at the hearing. Many of those who testified welcomed the applicant to the community and noted the applicant's financial sophistication and knowledge of the capital market. While many of those who testified supported the transfer of ownership, many also supported conditions being placed on the transfer of ownership and requested that the Department of Public Health monitor compliance with the conditions through progress reports presented annually to the Public Health Council; although, one speaker cautioned that the approval not be overloaded with conditions. The Coalition noted that they were unable to support the transfer to the applicant at the present or at the hearing in November, although they were hopeful that continuing discussions with the applicant would be positive. Subsequently, the Coalition, along with the other Interested Parties, which are called Resident Letter Groups in Attachment 2, developed, in cooperation with the applicant, an agreement which is included in your packet as Attachment 2, with 17 conditions, and this has been

signed by the Coalition, the Resident Letter Groups and the applicant. The agreement includes conditions on continuity of care, capital investment, community benefits, transportation, free care, patient liaison, outpatient clinics, cultural competency, healthcare disparities, hospital board, local advisory boards, employee relations, regular meetings with community representatives, treatment of victims of sexual assault and rape, enforceability, public support, and the completeness of the agreement. Staff recommends approval of this application with two conditions indicated on page 9 of the staff summary, which relate to free care and interpreter services, and the additional conditions referenced in the agreement in Attachment 2. Staff also notes that since the public hearing, and after the end of the public comment period, additional comments have been received from residents of the area, and also from elected officials, which support the transfer of ownership. Staff would be glad to answer questions on the project.”

Mr. Mark Rich, Board of Directors, MetroWest Medical Center and resident of Framingham addressed the Council. Mr. Rich said, “I am here this morning to express the Board of Directors’ support for the transfer of licensure from Tenet to Vanguard for MetroWest Medical Center. I think it is important for the Council, particularly in light of earlier comments today, to understand the process, to understand the context, I should say, within which the Board offers its support for this transfer. First and foremost, the Board supports the application contingent upon the conditions of sale that were just outlined. Those conditions of sale are a result of a community process that began ten months ago, upon learning that Tenet was going to sell MetroWest Medical Center. When we learned of that, the Board of Directors, under the leadership of our Chairperson, Deborah Tosti, began a series of meetings with our community interested groups, including the MetroWest Healthcare Coalition, the MetroWest Chamber of Commerce, Selectmen from Natick and Framingham, and other interested leaders in the community. The process was designed to develop a mechanism for input and to develop a way for the community to have meaningful input overall to the sale process. The results of those meetings were two public forums, one held each in Framingham and Natick, sponsored by the organizations that I just outlined. During those meetings, the public was invited to offer comments, suggestions, recommendations and concerns regarding the future of the medical center. That information was synthesized by the sponsoring groups and communicated to Tenet. That information was then included in Tenet, in their communications with potential bidders for the facility.”

Mr. Rich continued, “In October, when we learned that Vanguard had been chosen as the potential new owner of the facility, the sponsoring groups met again, this time augmented by the MetroWest Healthcare Foundation and Jobs of Justice in a process referred to as the Resident Letter Group process. The goal of that process was to add further definition and details to the broad concepts outlined during the public forum process earlier in the spring. After a series of meetings amongst the groups and with Vanguard, we reached agreement, a unanimous agreement, on the conditions of sale that are included in Attachment 2 to the package that has been referenced earlier.”

In closing, Mr. Rich stated, “I would just like to conclude and then I will turn it over to the others who would like to say a few words about this process, we, the Board of Directors, are sad to see Tenet go. They have been an extremely good corporate citizen. They have been a valuable partner to the community and made significant investments in our acute care facilities. That notwithstanding, the Board is extremely pleased to have the opportunity to work with Vanguard.

We view them as an excellent choice by Tenet and we believe that they will be a very good partner in our community.”

Ms. Nancy King, Executive Director, MetroWest Community Healthcare Coalition testified next to the Council, “The Coalition was formed back in 1995 in response to a prior sale of the hospital to Columbia HCA. The Coalition is a group of community-based organizations and individuals, whose mission is to advocate for the healthcare needs of the community, but primarily the underserved and uninsured populations in MetroWest. We have been participants in this public process and then negotiated the process with the other Resident Letter Groups and Vanguard... We would not be here with an agreement, with the conditions we came up with, without the strong support and leadership of the current Board of Directors of the MetroWest Medical Center. They brought us all together. Things were not always easy...but we hung in there because of their leadership.”

Ms. King said further, “All the conditions that were in the agreement have been agreed to by all the Resident Letter Groups, as we came to know them. The other concern was that Tenet now and Vanguard in the future, develop an affiliation agreement with the newly opened Framingham Community Health Center, and thanks to you and your deadline of today, I am pleased to report that that agreement was signed yesterday. As a result of that, we all feel very comfortable being here and supporting the sale...”

In conclusion, “Ms. King noted, “We do support the sale of the hospital to Vanguard. We welcome them to the community and hope that they will follow in Tenet’s footsteps as being a good community member and a good corporate citizen and we are looking forward to establishing a good, working relationship with them.”

Ms. Esther A. Hopkins, Selectman, Town of Framingham addressed the Council. Ms. Hopkins stated, “...I am one of the Selectmen in the Town of Framingham. The Selectmen from Framingham and Natick are one of the Resident Groups. We are the chief elected officials of our town and we host the MetroWest Medical Center. We are very concerned that whoever runs the hospital there has the needs of our residents at heart. We have worked with other Resident Groups in working out these conditions and both groups have concurred to all the conditions and were signatories on this agreement, and we welcome Vanguard to our communities, and we thank the Council for hearing us and for understanding how important this is to us, and what we are doing, and we appreciate your time.”

Mr. Ted Welte, President, MetroWest Chamber of Commerce, testified before the Council. Mr. Welte said, “I am a resident and work in Framingham. I am also a satisfied customer of Metrowest Medical Center, and as the Chamber President, we have been very pleased with the work that Tenet has done over the past few years, and we look forward to Vanguard as the new owner of MetroWest Medical Center. I would say that there is only one condition that they could not meet, and that was, we had hoped that they would be able to keep the current CEO, Mark Clement, and they failed to do that, but we certainly wish Mark well. He has done an incredible job at MetroWest Medical Center and we wish him well.”

Council Member Sherman added, “Before we vote, I want to say that Tenet has been a great corporate citizen for the Commonwealth and I wish you all well.”

Chair Ferguson stated, “I just want to reiterate, I think that the process has gone extremely well. I was impressed with Tenet’s early involvement in how to make this happen, and their commitment to making sure that whoever did this would encompass all of the hospital system and also would look at the conditions of participation with the same level of commitment that Tenet had had, and I certainly have been impressed with the Vanguard team, with Keith Pitts and others who have been involved in this process, and also with the staff. In a situation that had the potential to be very difficult, I think everybody worked very hard to make sure that this would function well, and that we would, most importantly, be able to provide services to the people of this area effectively, and maintain the commitment to the community and these hospitals. I want to thank the Staff and everybody who has been involved in the community for keeping everybody’s feet to the fire and making sure that this went effectively.”

Council Member Slemenda asked, “Is there a six month return on this one, as well, or is it one year?” Chair Ferguson replied, “Yes, the first year is six months and then annually after that.” Council Member Sherman made the motion for approval.

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve **Project Application No. 4-3A89 of Vanguard Health Systems, Inc. for transfer of ownership and original licensure of MetroWest Medical Center;** based on staff findings, and that the staff summary and letters of support from State Representative Deborah D. Blumer, and State Representative Jane E. Spilka and company be attached and made a part of this record as **Exhibit No. 14, 801.** This Determination is subject to the following conditions:

1. The Applicant has agreed to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined at M.G.L.c.118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue for MetroWest Medical Center allocated to free care shall be 3.17%. This percentage will be adjusted up or down when the audit of the facility’s gross patient service revenue is completed by the Division of Health Care Finance and Policy.
2. The Applicant shall enhance the Hospital’s existing interpreter services program by providing the following missing elements of a professional medical interpreter service:
  - Clarification of policies and procedures related to languages other than Portuguese and Spanish.
  - Collection of data related to emergency department encounters.
  - Provision to the Office of Multicultural Health (OMH) of a copy of the annual language needs assessment at MetroWest Medical Center as required by 105 CMR 130.1101-130.1108.

In addition, a plan for improvement addressing the above shall be submitted within 120 days of DoN approval to OMH, and MetroWest Medical Center shall notify OMH of any substantial changes to its interpreter services program after a plan for improvement has been agreed upon. Also, the Medical Center shall provide annual progress reports to the OMH on the anniversary date of DoN approval.

3. Continuity of Care: The Applicant shall maintain both campuses of the Hospital, consisting of the Framingham Union campus and the Leonard Morse campus. Subject to the provisions below, the Applicant shall also provide at the Hospital the following services (the “Essential Services”) for at least three years after the date of the sale:
- a) medical/surgical services;
  - b) obstetrical services at the Framingham campus;
  - c) emergency services (including radiology and laboratory services in support thereof);
  - d) psychiatric services (inpatient and outpatient) and substance abuse services (including at least 12 inpatient beds at the Leonard Morse campus for adolescent psychiatric services); and
  - e) pediatric services.

The Applicant shall not close any of the Essential Services for the first 18 months after the date of the sale. Should the Applicant, in consultation with the Hospital Board, find it necessary to close any of the above enumerated Essential Services during the last 18 months of the three-year period because of changes in the regulatory and reimbursement environments or because of changes in the health care delivery system, as determined in good faith by the Hospital Board, the Applicant will give notice to the Resident Letter Groups simultaneously upon giving notice to the Department of Public Health.

The Applicant acknowledges the importance of addressing the mental health and substance abuse needs of MetroWest. The Applicant shall maintain the Hospital’s current role and relationships with community service organizations to ensure access to existing community-based mental health and substance abuse services, and to work with the Mental Health Task Force of the Health Coalition and other interested organizations to insure local access to detoxification services. Furthermore, the Applicant shall promote and participate in regular meetings with community mental health and substance abuse providers, state agencies and consumer organizations to ensure the integrity of primary health care, emergency care and inpatient and outpatient services, currently done through the Task Force.

4. Capital Investment: The Applicant understands that investments in the Hospital’s physical plant and medical equipment are necessary to ensure that the Hospital both continues to grow and provide the appropriate scope and level of health care services to meet the needs of the MetroWest community, and strives to become the provider of choice to employers, residents and payors in the community. To that end and subject to physician availability, regulatory compliance, technological and clinical advances and community need, the Applicant will make the capital expenditures it deems necessary and appropriate to achieve such objectives.

When planning the capital requirements of the Hospital, Hospital management will meet with members of the Hospital medical staff, the Hospital Board and the Local Advisory Board. Based on those meetings, and based on the demographics of the community, the services and facilities offered by other healthcare providers in the area, the Hospital's current mix of services and facilities, and having due regard for patient safety and quality of care, Hospital management will prepare annually projections of service demand and a business plan for the Hospital. Once the business plan is complete, management will prepare annual operating and capital plans for the Hospital. The operating and capital plans will then be presented to the Hospital Board.

5. Community Benefits: The Applicant acknowledges the importance of providing community benefits to address unmet health needs of the underserved in the MetroWest area and shall appropriately consider the needs as determined by the MetroWest Community Benefits Advisory Committee and shall commit, at a minimum, resources to address those needs consistent with the resources historically committed by the Hospital. Such commitment will be measured on a two-year running average. Even though the Applicant is a for-profit entity, the Applicant endorses the principles of the Attorney General's Community Benefit Guidelines, and as long as other acute care hospitals in Massachusetts are providing annual reports of their community benefits required by those Guidelines, the Applicant will voluntarily provide to the Attorney General an annual report of its community benefits as well. The Applicant shall also maintain the open process that currently exists for participating in community benefits planning and for participating on the MetroWest Community Benefits Advisory Committee.
6. Transportation: The Applicant shall continue to provide transportation among the Leonard Morse Campus, the Framingham Union Campus and other Hospital sites as necessary for disabled, elderly and underserved patients to obtain medically necessary services provided by the Hospital at the other campus or sites. The Hospital will inform patients and staff in a culturally and linguistically appropriate manner (for example, through the use of signage and/or brochures) of the existence and availability of the transportation service and, in a timely manner, any proposed changes thereto. The Hospital will also notify its Local Advisory Boards of any proposed changes to the transportation service.
7. Free Care: The Applicant shall continue to provide free care services consistent with the requirements set forth in 105 CMR 100.602 (D). To such end, the Applicant will maintain or increase its level of free care, as defined in M.G.L.c.118G, or its successor statute covering uncompensated care, as existed prior to the transfer. If the Hospital demonstrates that changes in its service area beyond its control have made it impossible for the Hospital to maintain its pre-transfer level of free care, the Hospital may apply to have the free care percentage modified. The Applicant's free care obligation shall be expressed as a percentage of the Hospital's gross patient service revenue as defined in M.G.L.c.118G or its successor.

The Hospital will employ financial counselors to assist uninsured patients in determining whether they are eligible for enrollment in MassHealth or for the Uncompensated Care Pool (i.e., "Free Care"), and to educate its patients and staff

about what Hospital services may be covered under Free Care, whether “full free care,” “partial free care” or “medical hardship,” as defined by 114.6 CMR 12.03(3) and (7) (new emergency regulations effective 9/27/04). The financial counselors should be able to communicate, directly or with the assistance of translation service providers, with MetroWest patients, regardless of language.

8. Patient Liaison: The Applicant is committed to ensuring that the Hospital operates in an environment in which patients are free to express their concerns about the Hospital or their care at the Hospital, and in which those concerns are valued, and to that end will ensure that one or more persons serve as a liaison to the Hospital’s patients and convey to Hospital management the patients’ concerns. The Applicant will maintain the existing signage or otherwise inform patients in a linguistically appropriate manner of the existence of the liaison.
9. Outpatient Clinics: The Applicant acknowledges that outpatient Hospital services are an important component of the Hospital’s overall mission of ensuring access to quality health care services within the community, and is committed to ensuring that outpatient services continue to be available in the community. If the Applicant decides to cease providing the services currently provided at the Hospital’s OB/GYN, Pedi-Endocrinology, Podiatry, Diabetes, sexually transmitted disease or infectious disease outpatient clinics, it will give the Resident Letter Groups at least 90 days advance notice of such intention, and will work with the Resident Letter Groups to seek alternative means of making available to MetroWest residents high-quality, cost-effective outpatient services in a clinically appropriate setting.
10. Cultural Competency: The Applicant is committed to ensuring that culturally and linguistically appropriate services are available and integrated throughout the Hospital, including appropriate interpreter services for patients, English as a second language training for employees, and cultural competency training for employees, and will continue to actively recruit and retain multilingual and multicultural staff at the Hospital. The Applicant supports the objectives and purposes of the culturally and linguistically appropriate standards published by the U.S. Department of Health and Human Services’ Office of Minority Health. These standards are:
  - a. Ensure that patients receive from all staff members effective, understandable and respectful care that is provided in a manner compatible with their cultural health beliefs and practices and preferred languages;
  - b. Implement strategies to recruit, retain and promote at all levels of the organization a diverse staff and leadership that are representative of the demographic characteristics of the service area;
  - c. Ensure that all staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery;

- d. Offer and provide professional language assistance services at no cost to each patient with limited English proficiency at all points of contact, in a timely manner, during all hours of operation;
- e. Provide patients in their preferred language both verbal and written notice of their rights to receive language assistance services; and post signage in the languages commonly spoken by people in the hospital service area;
- f. Develop, implement and promote a written strategic plan that outlines clear goals, policies, operational plans, and management/accountability/oversight mechanisms to provide culturally and linguistically appropriate services;
- g. Conduct initial and outgoing organizational wide assessments of their culturally competent services and integrate cultural and linguistic competence related measures into their internal audits, performance improvement programs, patient satisfaction assessments, and outcome based evaluations;
- h. Work to maintain a current demographic, cultural, and epidemiological profile of the community as well as a needs assessment to accurately plan for and implement services that respond to the cultural and linguistic characteristics of the service area;
- i. Develop participatory, collaborative partnerships with communities and utilize a variety of formal and informal mechanisms to facilitate community and patient/consumer involvement in designing and implementing culturally competent related services; and
- j. Ensure that conflict and grievance resolution processes are culturally and linguistically sensitive and capable of identifying, preventing, and resolving cross-cultural conflicts or complaints by patients.

The Hospital will meet twice a year with the Resident Letter Groups and other interested parties to report on the availability and quality of its culturally and linguistically appropriate services.

11. Health Care Disparities: The Applicant will participate and collaborate with community organizations, including physicians and other health care providers, to identify and address health care disparities that may exist or that may arise in the MetroWest community, and to assist such organizations in conducting outreach and other programs intended to identify, educate and find solutions for such health care disparities, including but not limited to those particularly affecting the African-American and Hispanic communities. As part of the Hospital's efforts to address health care disparities in the communities it serves, the Hospital will do its part to educate Hospital staff and medical staff about these health care disparities.
12. Hospital Board: The Hospital Board of Trustees (the "Hospital Board") shall consist of not less than nine and not more than 13 actively involved members who live or work in

and reflect the broad interests of the communities served by the Hospital. One-half of the Hospital Board members will be members of the medical staff of the Hospital and one-half will be community representatives. The Hospital CEO will also be a member. The Hospital Board is intended to reflect the racial, ethnic, economic and cultural diversity of the communities that make-up the MetroWest service area. When non-physician vacancies occur on the Hospital Board, other than the initial appointments, the Applicant shall seek and consider in good faith nominations for these seats from the Resident Letter Groups, Local Advisory Boards and other interested community organizations.

13. Local Advisory Boards: The Applicant shall maintain a Framingham Hospital Local Advisory Board and a Natick Hospital Local Advisory Board (individually a “Local Advisory Board” and collectively the “Local Advisory Boards”). The number of Local Advisory Board members shall be fixed by the Hospital Board, but shall be not less than seven. The members of each Local Advisory Board shall be appointed by the Hospital Board and shall consist of two persons nominated by the MetroWest Community Healthcare Coalition, two persons nominated by the medical staff of the Hospital, two persons nominated by the Framingham Board of Selectmen for the Framingham Hospital Local Advisory Board, and two persons nominated by the Natick Board of Selectmen for the Natick Hospital Local Advisory Board. The remaining Local Advisory Board seats shall be residents of the community appointed by the Hospital Board. The Chairperson of each of the Local Advisory Boards shall be appointed by the Local Advisory Board, subject to the approval of the Hospital Board.

To be eligible to be a member of a Local Advisory Board, an individual must work or reside in the primary service area of the Hospital and possess the kind of skills and experiences that can contribute to the purpose and mission of the Hospital. Additionally, each Local Advisory Board is intended to reflect the racial, ethnic, economic and cultural diversity of the communities that make-up the MetroWest service area and the broad interests of the communities served by each Local Advisory Board. One-half of all members of the Framingham Hospital Local Advisory Board must work or reside in the Town of Framingham and one-half of all members of the Natick Hospital Local Advisory Board must work or reside in the Town of Natick.

In addition to notifying the MetroWest Community Healthcare Coalition and the Framingham and Natick Boards of Selectmen, the Hospital will publish a notice in the local newspapers soliciting nominees for membership on the Local Advisory Boards, and describing in such notices the duties and membership qualifications.

The principal functions of the Local Advisory Boards shall be to advise and make recommendations to the Hospital Board about the community’s healthcare needs, including free care, interpreter services, cultural competence issues and community benefits issues at the Framingham and Natick campuses, and about the Hospital’s efforts to address those needs. To facilitate communication between the Local Advisory Boards and the Hospital Board, the Hospital Board shall meet with each Local Advisory Board formally at least once each year and receive regular reports throughout the year.

14. Employee Relations: The Applicant will recognize the right of employees to organize and select a bargaining unit in accordance with the law. The Applicant will honor the collective bargaining agreements in existence at the time of the license transfer, and will bargain in good faith upon their respective expirations.
15. Regular Meetings with Community Representatives: Each of the Local Advisory Boards, with Hospital management and the Hospital Board, will hold one or more public forums annually to solicit public comments and feedback on the operations of the hospitals. The Applicant shall also meet with the Natick and Framingham Board of Selectmen on an annual basis.
16. Treatment of Victims of Sexual Assault and Rape: The Applicant is committed to improving services for victims of rape or sexual assault who seek medical treatment in the Hospital's emergency rooms. The Applicant will apply to become a SANE (Sexual Assault Nurse Examiners) site and will continue to follow the same protocols used by SANE hospitals. In accordance with these protocols, the Hospital will: provide specialized medical-legal examinations for victims of sexual assault who are 12 years of age and older that include screening for sexually transmitted diseases and prophylactic drugs for pregnancy and HIV; enhance existing community-based response systems, including but not limited to informing all victims of their local rape crisis services provider and their right to have an advocate present for the exam; improve and standardize data collection on the incidence of sexual assault victims seeking treatment at the Hospital; and follow a standardized procedure for collection of forensic evidence from victims of sexual assault. The Hospital will provide privacy for victims while waiting for exams and consider victims' psychological needs in triage decisions. Also, the Hospital will provide regular retraining of the staff of the Hospital emergency rooms on the protocols for treating victims of sexual assault.
17. Enforceability: The Applicant shall appear, along with any Resident Letter Group that chooses to appear, before the Public Health Council (the "PHC") within six months after the date of sale, and on an annual basis up to four years thereafter, to report on compliance with the terms and conditions of this Agreement. If the Resident Letter Groups and the Applicant agree, they may jointly petition the PHC in writing to relieve the Applicant of the responsibility of appearing annually before the PHC.
18. Public Support; Press Release: The Resident Letter Groups shall provide to DPH a written letter of support, mutually acceptable to the Parties, and shall publicly support in the press and in all public forums the Applicant's acquisition of the Hospital, and shall not seek any change, condition, obligations or other commitments from the Applicant as a condition of the DPH license transfer or take any other action that would interfere with the closing, other than that which is set forth herein.

The parties will jointly develop a press release in a form mutually acceptable to all Parties. Nothing herein shall prohibit any Party from responding to questions by the press or media, once the Agreement has been signed.

19. Complete Agreement: The current owner of the Hospital has agreed to undertake certain commitments more particularly described in a certain Coalition Agreement dated December 23, 1998, among MW Health Partners, Inc., MetroWest Health Care Coalition and Tenet MW (the “Coalition Agreement”). The parties acknowledged that the Applicant has entered into this Agreement upon the conditions and with the express understanding that (i) this Agreement replaces the Coalition Agreement, (ii) effective upon the Applicant’s acquisition of the Hospital, the Coalition Agreement will be no longer in force or effect with respect to time periods thereafter, and (iii) except for applicable statutory requirements, there are no other agreements or understandings with respect to the subject matter of this Agreement applicable to the Hospital or to the Applicant. Notwithstanding the foregoing, the Boards of Selectmen of the Town of Framingham and Natick, not being parties to the Coalition Agreement, do not subscribe to the acknowledgement of this paragraph.

The reason for this approval with conditions is that the application satisfies the standards applied under the Alternate Process for Change of Ownership, as listed at 105 CMR 100.602 of the Determination of Need Regulations as follows:

- A. Individuals residing in the Hospital’s primary service area comprise a majority of the individuals responsible for decisions concerning:
  - 1. approval of borrowings in excess of \$500,000;
  - 2. addition or conversions which constitute substantial change in services;
  - 3. approval of capital and operating budgets; and
  - 4. approval of the filing of an application for determination of need.
- B. The Applicant has consulted with the Division of Medical Assistance (DMA) concerning the access of medical services to Medicaid recipients to the Hospital. Comments from DMA indicate no access problems for Medicaid recipients in the Hospital’s primary service area.
- C. The Division of Health Care Quality had determined that the Applicant and any health care facility affiliates have not been found to have engaged in a pattern or practice in violation of the provisions of M.G.L.c.111s.51(D).
- D. The Applicant has agreed, as a condition of approval, to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined in M.G.L.c.118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue allocated to free care by MetroWest Medical Center by the Applicant Acquisition Subsidiary Number 9, Inc., shall be 3.17%.
- E. VHS Acquisition Subsidiary Number 9, Inc. pending acquisition of MetroWest Medical Center, will be an affiliate of the Hospital, which is licensed by the Department.

The Mark Rich, Laurie Martinelli, Martin Cohen, Yoon Lee, Walter Soper, Theodore Welte and the Christopher Petrini/John Flynn Interested Parties requested a public hearing on the application, which was held on November 10, 2004 at Keefe Technical School, located in Framingham. Sixty people attended the hearing, 31 of whom testified. Many of those who testified supported the transfer of ownership, and many also supported conditions being placed on the transfer of ownership and requested that the Department of Public Health monitor compliance with the conditions through progress reports presented annually to the Public Health Council. Subsequently, the Interested Parties developed, in cooperation with the Applicant, an agreement with 17 conditions, which was signed by the MetroWest Health Care Coalition, the Interested Parties (called the Resident Letter Groups in the conditions) and the Applicant and approved as conditions to the Determination of Need recommendations of approval.

The meeting adjourned at 12:15 p.m.

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Christine C. Ferguson  
Chair

LMH/lmh